

REMARKS

Claims 39-47, 78, and 79 remain pending. By the foregoing amendment, claims 1-12, 22-29, and 38 have been canceled without prejudice or disclaimer in an earnest effort to advance prosecution. Claim 39 has been amended to define more fully the invention by pointing out that the container is a food tray. Claim 45 has been amended to clarify that the container (in this embodiment) dimensionally distorts upon exposure to microwave radiation. Claim 78 has been amended to point out that the microwavable food tray is dimensionally stable at elevated temperatures encountered in cooking applications, and also to clarify that the bulk polymer comprises polyethylene terephthalate (PET). Support for the amendment is found in the specification, *inter alia*, at page 1, second paragraph; page 3, lines 15-24; page 12, lines 22-26; and in Figures 1-3. No new matter is added.

Claims 1-4, 39-42, and 78 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Chen U.S. Patent 5,219,665 ("Chen") in view of Weiss et al. U.S. Patent 3,960,631 ("Weiss"), El-Afandi et al. U.S. Patent 5,849,401 ("El-Afandi") and Swamikannu et al. U.S. Patent 5,436,296 ("Swamikannu"). By the foregoing amendment, claims 1-4 have been canceled. The rejection of claims 39-42 and 78 is respectfully traversed.

Before addressing the four (4) references relied on in this rejection, Applicant wishes to emphasize that amended independent claim 39 is directed to a particular article of manufacture, namely a food tray. Independent claim 78 also is directed to a particular article of manufacture, namely a microwavable food tray. As described in the specification, food trays are useful for packaging and storing consumer portions of fresh meat or other foodstuffs, such as for retail sale to consumers (*see, e.g.*, page 1, second paragraph). Microwavable food trays, unlike refrigerator

In any event, no motivation exists to combine the Chen/Weiss refrigerator liners with the food containers of El-Afandi. As discussed above, the refrigerator liners are non-analogous and not properly combinable with food trays. No reason or explanation is given why persons skilled in the art would have combined these divergent disclosures. Persons skilled in the art simply would not have combined these disclosures in the manner proposed in the Office Action.

Swamikannu is cited as disclosing blends of polyethylene terephthalate and polyethylene in which a glycidyl group-containing copolymer is used as a compatibilizer. As the Office Action points out, Swamikannu discloses that virgin or “reprocessed” polyethylene terephthalate and polyethylene can be used (column 4, lines 58-60). However, Swamikannu does not describe a thermoforming process, let alone a thermoforming process in which a blend of previously-thermoformed polyethylene terephthalate and polyethylene is reprocessed into a layer of a multi-layered article. Note that column 6, lines 10-17 and 61-62 describe injection molding or molding where the plastic cools and solidifies in the mold.

Neither Al-Afandi nor Swamikannu remedies the deficiencies of the primary references. None of the documents, taken alone or in any combination, describes or even remotely suggests a food tray having the particular first, second, and third layers as defined in independent claims 39 and 78.

Claim 78 further distinguishes the cited documents by reciting that the microwavable food tray exhibits dimensional stability at elevated temperatures encountered in cooking temperatures. Not only are the refrigerator liners of Chen and Weiss not microwavable food trays, as discussed above, but the refrigerator liners would not exhibit dimensional stability at elevated temperatures as required by amended claim 78. None of the cited documents, alone or

in any combination, suggests a microwavable food tray having the particular properties and whose layers have the particular compositions as set forth in amended claim 78.

The Office Action has failed to set forth a *prima facie* case of obviousness. Reconsideration and withdrawal of this ground of rejection are respectfully requested.

Claims 1-9 and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schneider et al. U.S. Patent 6,333,094 (“Schneider”) in view of El-Afandi and Swamikannu. By the foregoing amendment, claims 1-9 and 12 have been canceled. Therefore, this ground of rejection is now moot.

Claims 1-11, 22-29, 38-46, 78, and 79 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Blemberg *et al.* U.S. Patent 5,424,347 (“Blemberg”) in view of Wakabayashi *et al.* U.S. Patent 6,355,336 (“Wakabayashi”), Schneider, El-Afandi, and Swamikannu. By the foregoing amendment, claims 1-11, 22-29, and 38 have been canceled and, therefore, the rejection of these claims is now moot. This rejection is respectfully traversed insofar as it applies to claims 39-46, 78, and 79.

The Office Action cites Blemberg as describing polyvinyl chloride resin based thermoformed food trays for microwave treatment of foods. The Office Action apparently recognizes that Blemberg does not disclose a tray having the particular first, second, and third layers specified in independent claim 39 or 78.

Wakabayashi is cited as describing a multi-layer packaging film having an intermediate layer comprising polytetramethylene terephthalate resin such as co-polymerized PBT. However, Wakabayashi fails to disclose or even remotely suggest a thermoformed food tray having the particularly claimed first, second, and third layers as set forth in independent claims 39 and 78.

The Office Action asserts that Wakabayashi describes the multi-layer film as an “improvement” over conventional polyvinyl chloride or polyvinyl chloride resins in “microwave food applications” and therefore provides motivation to substitute these materials for the polyvinyl chloride resin described in Blemberg. In any event, Wakabayashi is directed to a “packaging film suited for use as a stretch film, domestic wrapping film and such designed to be used for food packaging and similar purposes” (column 1, lines 5-8). Nothing in Wakabayashi even remotely suggests preparing a thermoformed food tray as in the claimed invention. Because Wakabayashi is directed to a different type of article requiring different considerations (see column 1, line 67 to column 2, line 2), persons skilled in the art simply would not have combined Wakabayashi and Blemberg in the manner proposed in the Office Action.

Claim 78 specifies that the first layer comprises polyethylene terephthalate (PET). Wakabayashi criticizes polyethylene terephthalate as being unsatisfactory in flexibility, weak in adhesiveness when used as a wrapper, and defective in cutting properties (column 1, lines 41-45). Therefore, even if the references were properly combinable, the microwavable food tray of claim 78 would not result at least because Wakabayashi expressly teaches away from using PET as required by amended claim 78.

Schneider describes a thermoformable composite synthetic veneer film useful for producing furniture parts. According to Schneider, the composite film can be laminated (“thermoformed” in Schneider’s words) to a previously-produced part of wood or wood materials (see, e.g., column 2, lines 31-36). Schneider fails to describe or even remotely suggest a thermoformed food tray as claimed in independent claims 39 and 78.

As discussed above, El-Afandi does not describe a food tray having the particular first, second, and third layers as defined in independent claim 39 or in independent claim 78. El-

Afandi also does not provide any guidance as to how the particularly claimed materials could be reprocessed in a thermoforming operation. Swamikannu does not describe a food tray, let alone a multilayer thermoformed food tray, and does not disclose or suggest reprocessing a blend of polyethylene terephthalate and polyethylene in a thermoforming process.

None of the cited documents, whether taken alone or in any combination, describes or suggests the particular thermoformed food tray claimed in independent claim 39 or 78. Dependent claims 40-44, 46, and 79 are allowable over the cited documents for at least the same reasons as apply to independent claims 39 and 78.

With respect to claim 45, the Office Action asserts that Wakabayashi discloses that the packaging film exhibits haze upon being exposed to microwave radiation, which is considered to be “distortion” as claimed in claims 45. Claim 45 has been amended to recite that the container dimensionally distorts upon exposure to microwave radiation. As described in the specification, this embodiment is useful where it may be desirable to provide an indicator of consumer misuse when a container is not intended for cooking applications. This feature is not described or suggested by any of the cited documents. Applicant respectfully submits that claim 45 is patentable over the cited documents for this reason, in addition to the reasons previously argued with respect to independent claim 39.

Reconsideration and withdrawal of the § 103 rejection over Blemberg in view of Wakabayashi, Schneider, El-Afandi, and Swamikannu are respectfully requested.

Claim 47 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Blemberg in view of Wakabayashi, Schneider, El-Afandi, and Swamikannu, and further in view of Brady U.S. Patent 5,916,615 (“Brady”).

liners, can easily fit into household microwave ovens. A sample of a food tray was shown to Examiner Madsen by the undersigned during a personal interview on August 4, 2003.

As the Office Action apparently recognizes, Chen and Weiss are directed to refrigerator liners. The Office Action asserts that the refrigerator liners of Chen and Weiss have bottom and flange portions. Even assuming that this characterization of Chen and Weiss is accurate, refrigerator liners are not food trays as defined and claimed in the subject application. An automobile has four wheels, but not all things with four wheels are automobiles. The term "food tray" does not merely state an intended use of the article; it defines a particular article of manufacture which is not taught or even remotely suggested by the Chen and Weiss documents.

Chen and Weiss not only fail to describe food trays, but these documents also are non-analogous to food trays. Chen addresses the problem of providing resistance to hydro-halocarbons in refrigerator liners (column 1, lines 10-12), a problem which is irrelevant and non-analogous to food trays.

El-Afandi is cited as describing reprocessing scrap from a multilayer thermoformed container and reusing the scrap in one of the layers of the container. El-Afandi describes compostable structures having a core layer with a lactic acid residue polymer and first and second blocking layers with semi-crystalline aliphatic polyesters. Significantly, the compostable structures of El-Afandi utilize an entirely different chemistry from that of the thermoformed food trays as presently claimed. El-Afandi merely states the common economic goal of trying to reuse scrap materials (column 10, lines 22-36). El-Afandi does not provide any guidance whatsoever as to how the particular materials claimed in independent claims 39 or 78 could be reprocessed in a thermoforming operation.

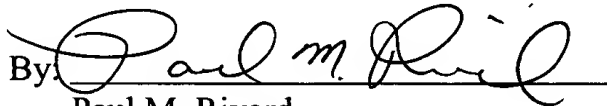
Brady is cited as describing a package comprising a gas-permeable substrate to allow oxygen flow and prevent discoloration of meat. Brady, in fact, describes adhering a gas-permeable substrate 36 to a food container (support member 12). Brady fails to describe or suggest a thermoformed food tray having the particular first, second, and third layers as set forth in independent claims 39 and 78. Brady fails to remedy the deficiencies of the primary references as discussed above. Claim 47 is allowable for at least the same reasons as argued above with respect to independent claim 39. Reconsideration and withdrawal of this ground of rejection are respectfully requested.

CONCLUSION

In view of the foregoing, favorable reconsideration and allowance of the subject application are respectfully requested. The Examiner is invited to telephone the undersigned at the number listed below if doing so would be helpful to resolve any outstanding issues.

Respectfully submitted,

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Date: February 20, 2004

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